IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.429 OF 2005

Smt. Bharati Shrikant Pawar ... Petitioner

Vs.

Mrs. Kiranbala Shyam Murari ... Respondent

Mr. P.J. Pawar for the petitioner.

Mr. Rajesh P. Behere for the respondent.

CORAM: SMT. RANJANA DESAI, J.

DATED: 22ND FEBRUARY, 2005.

P.C.:-

1. The petitioner is the original licensee. She entered into a registered leave and licence agreement on 19/5/2001 with the respondent. The agreement was for a period of 11 months with security deposit of Rs.25,000/-. The period of licence expired on 18/4/2002. Since, the petitioner did not vacate the suit premises, the respondent served a notice on her calling upon her to vacate the suit premises. The petitioner did not vacate the suit premises pursuant to the said notice and, hence, the respondent filed Application No.15 of 2003 before the Competent Authority under the Maharashtra Rent Control Act, 1999. The said application was allowed by the Competent Authority by its order dated 31/3/2004 and the petitioner was directed to vacate the suit premises. It is the case of the petitioner that summons was not served

on her and, hence, she could not remain present. The petitioner, thereafter, filed a Revision Application/Appeal bearing No.Desk/M.R.C.A./216/04 before the Addl. Commissioner, Konkan Division, Mumbai. The appeal came to be dismissed and, hence, this writ petition.

2. The learned counsel for the petitioner urged that the summons was sent by Registered Post Acknowledgement Due but was returned with the postal remark "not claimed". He relied upon the judgment of this court in **Lalmani Ramnath Tiwari v. Bhimrao Govind Pawar, 2001 (2) Mh.L.J. 342** where this court has held that presumption of service of notice does not arise if packet containing notice is returned with postal endorsement "not claimed".

3. I have heard the learned counsel for the respondent. He contended that the petitioner has purposely evaded the summons. The petitioner very well knew about the matter. The petitioner's conduct must also be deprecated because she has not paid the arrears of compensation.

4. In my opinion, it is not necessary for me to go into the merits of the case. In the interest of justice, the matter needs to be remanded to the Competent Authority. I am informed by the learned counsel for the petitioner that the arrears of compensation are about Rs.1,70,000/-. The petitioner is disputing this. In the circumstances of the case, therefore, the petitioner should be directed

to deposit a sum of Rs.1 lac in the trial court within a period of four weeks from today. Hence, the following order.

5. Application No.15 of 2003 is remanded to the Competent Authority under the Maharashtra Rent Control Act, 1999. The parties will appear before the Competent Authority on 14/3/2005. The Competent Authority is directed to decide the application afresh after giving the petitioner and the respondent opportunity to argue their respective cases. The Competent Authority is directed to hear and dispose of the application within a period of four months from the date of receipt of this order by it. The petitioner is directed to deposit a sum of Rs.1 lac with the Competent Authority within a period of four weeks from today. The deposit of Rs.1 lac will be condition precedent to the hearing of Application No.15 of 2003 afresh. On the petitioner depositing the sum of Rs.1 lac, the respondent will be at liberty to withdraw the same after furnishing security to the satisfaction of the Competent Authority.

6. Petition is disposed of in the aforestated terms.

(SMT. RANJANA DESAI, J.)